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SUBJECT: KOSOVO: EULEX AT THE SIX MONTH POINT

Classified By: Ambassador Tina S. Kaidanow for Reasons 1.4 (b), (d).

11. (C) SUMMARY: Six months after EULEX's deployment, we are getting a better sense of the mission's strengths and weaknesses. EULEX Police, as an example, were active and successful in suppressing protests in north Mitrovica during Albanian efforts to rebuild destroyed homes in Kroji Vitakut. The Justice component continues to operate Mitrovica Courthouse and hear cases. Customs maintains its presence at Gates 1 and 31 in spite of protests and roadblocks. However, EULEX is demonstrating a lack of policy coherence in its mission-wide operations and continues to leave the critical question of applicable law unanswered. EULEX's first six months have demonstrated the ability to react to events and enforce stability in Kosovo, but continued success will require greater policy consistency on their part and a willingness to act, rather than react. If EULEX continues to insist that its mission is a strictly technical one that is limited to monitoring, mentoring, and advising, it runs a risk of losing influence over the longer term. END SUMMARY

POLICE

12. (C) EULEX's Police component, with 1,584 total staff (international and national), composes the largest share of EULEX's 2,513 person presence in Kosovo. In the six months since deployment, EULEX police have achieved a mixed record. In one notable success, EULEX Police played a critical role this May in protecting Albanian housing reconstruction efforts in the Kroji Vitakut area near Mitrovica. Through a combination of quiet discussions and forceful resolve -- including the use of more than 1,000 canisters of tear gas to disperse Serb protesters during daily demonstrations -- EULEX police defused a potentially explosive problem.

13. (C) EULEX has also advanced its relationship with the Government of Serbia and is supplanting UNMIK as Serbia's interlocutor in Kosovo. On June 10, the Serbian Ministry of Internal Affairs (MOIA) submitted to EULEX a Protocol on Police Cooperation. The Protocol proposes improved assistance and coordination on any unlawful activities at the borders, information exchange on all laws and regulations designed to prevent illicit activities, and information sharing on all events relevant to enforce laws on illegal border activities. EULEX regards this as a positive development that indicates a new flexibility in Belgrade's rigid, UNMIK-only position. It is not yet clear that EULEX

can exploit this opening and use the agreement as a springboard for direct cooperation between the Kosovo Police (KP) and their Serbian counterparts.

¶4. (C) EULEX Police continues to limit itself to a narrow interpretation of its monitoring, mentoring, and advising (MMA) mandate that restricts its engagement with the KP in a way which risks allowing interethnic tension to fester and, at times, increase. There are reports of several incidents where KP officers may have abused Serb suspects, something that would not have happened had EULEX been actively engaged in actions taken in Serb areas. With EULEX officers assigned primarily to advisory roles that confine the officers to the station house, direct on-the-street supervision that might prevent incidents is missing. The worst example, highlighting an absence of direct EULEX oversight, occurred on May 10, in the Kosovo Serb enclave of Ranilug (Kamenica), where a KP ROSU (Regional Support Operational Unit) used disproportionately violent methods to disperse a Serb crowd protesting power cuts. EULEX claims to be monitoring the KP's own internal investigation of the incident but has not pressed for immediate accountability and disciplinary action.

¶5. (C) We continue to urge EULEX Police to implement its mandate broadly and provide the supervision that the KP needs. Most recently we pushed EULEX Police to use its authorities actively during the Vidovdan Commemoration. On June 28, large numbers of Serbs from Kosovo and Serbia gathered at Gazimeston Tower outside Pristina to commemorate the 1389 Battle of Kosovo Polje. In the past, UNMIK used its executive authority to oversee KP actions during the

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controversial annual commemoration. EULEX Police assigned just seven additional police officers to work with the KP in an MMA, not an oversight, role. A large number were on-call in the event of emergency. Fortunately, the KP performed extremely well, placing its few Serb officers (the Vidovdan event occurred before the mass return of Serb officers in southern Kosovo to the police force) at key locations throughout the day. It is still a concern, however, that EULEX failed to develop a robust plan that might prevent incidents from occurring, whether or not it needed to be deployed.

JUSTICE

¶6. (C) EULEX Justice is a work in progress. There are noteworthy accomplishments at the Mitrovica Courthouse in capacity-building and War Crimes prosecution, but EULEX Justice's focus on court procedure comes at the expense of results, and it has yet to address seriously the problem of applicable law, which remains a sore spot with the Kosovo public, who not surprisingly have asked numerous questions about EULEX's overall commitment to Kosovo sovereignty. EULEX's answers on these points have been confusing and contradictory.

¶7. (C) At the Mitrovica Courthouse in north Mitrovica, EULEX is making slow, careful progress. On May 15, EULEX, using international jurists, concluded its second trial with the conviction of a Kosovo Albanian defendant who received a six month sentence for inflicting light bodily injuries on a Kosovo Serb during a violent outbreak that occurred in January 2009. The third court case is ongoing. Three cases in six months is less than we hoped for, and we hear similar concern from EULEX itself.

¶8. (C) EULEX's capacity-building with prosecutors is showing more dynamism. In Pristina, three EULEX prosecutors typically share about 40 cases each with Kosovo prosecutors; in other regions, the workload is smaller. EULEX prosecutors work closely with their local counterparts and guide them from initial investigation through conviction. For war crimes prosecutions, EULEX relies only on internationals and has completed two war crimes trials, securing convictions in

both cases. Its third trial is underway.

¶9. (C) With regard to the question of applicable law, there is apparently growing controversy on this issue within EULEX Justice. During the week of June 15, Theo Jacobs, the Chief EULEX Prosecutor, informally told EULEX prosecutors to use Kosovo law as the legal basis for their work. Isabelle Arnal, EULEX's Chief Prosecutor to the Special Prosecutor's Office in the Republic of Kosovo (SPRK), we subsequently learned, told Jacobs that she disagrees and will continue to pick and choose between Yugoslav, Serbian, and UNMIK law as appropriate. Until now, EULEX international judges have been given almost carte blanche in their choice of applicable law for use in rendering decisions. The result is a confusing mish-mash of legal rulings with little internal consistency.

CUSTOMS

¶10. (C) Since EULEX Customs began operations at Gates 1 and 31, it has faced a number of challenges, the most recent of which involved Serb-emplaced roadblocks; beginning on June 22, small crowds of 50 to 60 Kosovo Serbs blocked the roads leading to Gates 1 and 31 in order to prevent EULEX from relieving the shift working at the gates. In the most egregious instance, the EULEX Customs shift was not changed for over 50 hours, and EULEX began moving personnel via KFOR helicopters. On July 1, succumbing to pressure from Belgrade and EULEX, the protesters removed the roadblocks and EULEX shift changes proceeded without incident. Parallel assembly members of Leposavic, Mitrovica, Zubin Potok, and Zvecan, however, have reserved the right to use the roadblocks in the future, and say they intend to block the roads one day per week without advance notice.

¶11. (C) Kosovo Serbs north of the Ibar have long resented EULEX's activity at the gates and started occasional bouts of

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active resistance in February 2009 when EULEX Customs officials began registering commercial goods entering through the Gates 1 and 31. This data had been left unrecorded since the gates were destroyed in February 2008. The registration process entails collecting basic information about the shipments, including company name, type of goods, value and quantity, to share with customs officials at the inland Mitrovica customs clearance terminal. EULEX has also been sharing and comparing data with Serbian Customs, helping to identify and curb smuggling. In March, EULEX began taking copies of driver documents and recording truck information. In May, EULEX started making copies of invoices and the declared value of goods entering Kosovo. The last two steps help guarantee the driver will present the goods for clearance at the Mitrovica terminal. The head of Kosovo Customs, Naim Huruglica, has told us that EULEX data collection efforts at the gates have significantly reduced smuggling, particularly for goods with high excise duties such as fuel, tobacco, and alcohol. That said, Huruglica estimates 10 - 20% of goods with an end-destination in northern Kosovo still enter undeclared through gates 1 and 31 because EULEX is not inspecting the trucks.

¶12. (C) Full customs procedures, including goods inspection and fee collection, will not be reinstated at Gates 1 and 31 until the physical infrastructure of the gates is repaired and specialized customs equipment obtained. Huruglica tells us that EULEX's efforts to restore customs operations at the northern gates is focused solely on operational issues at the moment, and the mission has not yet started to address the thorny question of which law EULEX should apply when collecting fees. Although under an UNMIK umbrella,⁸ EULEX is operating in an independent Kosovo, raising the question of whether UNMIK regulations or Kosovo Law should be the basis for collections.

¶13. (C) Jay Carter, EULEX Deputy Chief of Staff, tells us that EULEX Customs is preparing a decision for Head of

Mission Yves de Kermabon that outlines three alternatives concerning applicable law for customs: 1) current Kosovo law, 2) Serbian law (which would be referred to as EU law, to provide necessary cover), or 3) recognize that neither Kosovo nor Serbian law is in full compliance with EU law. It is not clear when de Kermabon may review the memo, nor what position the Serbian government will take on this issue. The Serbian government also loses revenue from the lack of an effective customs regime, but political imperatives and the likely violent response of northern hardliners (and outright criminals) to reinstatement of the customs fees could well prevent further progress in negotiation with Belgrade.

Comment:

¶14. (C) EULEX is a complex mission. Yves de Kermabon and his staff are doing a good job at negotiating the tricky politics inherent in trying to please Brussels, Belgrade, and Pristina all at once, and we appreciate their openness to our input and their willingness to listen. At the same time, we find ourselves generally praising EULEX's modest accomplishments and waiting impatiently for more monumental achievements. Ever wary of straying beyond its monitoring, mentoring, and advising mandate lest it risk breaching its status neutrality and offending a non-recognizing EU member-state, EULEX now needs to focus on remaining relevant here. As we have noted, EULEX frequently runs away from the difficult questions. It needs to start worrying about a more troublesome prospect: what happens when the political establishment here starts to ask more penetrating questions about the nature of EULEX activity, particularly on the justice side, where EU queasiness over accepting Kosovo law as the sole applicable legal framework leaves Kosovars questioning the mission's relevance and utility.

KAIDANOW